

VZCZCXYZ0007  
PP RUEHWEB

DE RUEHNY #1039/01 2890631  
ZNY CCCCC ZZH  
P 160631Z OCT 07  
FM AMEMBASSY OSLO  
TO RUEHC/SECSTATE WASHDC PRIORITY 6357  
INFO RUEHSW/AMEMBASSY BERN PRIORITY 1256  
RUEHLO/AMEMBASSY LONDON PRIORITY 1481  
RUEAHLA/HOMELAND SECURITY CENTER WASHINGTON DC PRIORITY  
RUEHRC/DEPT OF AGRICULTURE WASHINGTON DC PRIORITY  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC PRIORITY  
RHMFISS/DEPT OF ENERGY WASHINGTON DC PRIORITY  
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC PRIORITY  
RUEHC/DEPT OF LABOR WASHINGTON DC PRIORITY  
RUEATRS/DEPT OF TREASURY WASHINGTON DC PRIORITY

C O N F I D E N T I A L OSLO 001039

SIPDIS

SIPDIS

EUR/NB (MMCDOWELL), DEPARTMENT OF COMMERCE (DAS PDYCK,  
LMARKOWITZ), STATE PASS TO USTR, DEPARTMENT OF HOMELAND  
SECURITY FOR US COAST GUARD

E.O. 12958: DECL: 10/05/2017  
TAGS: [ECON](#) [EPET](#) [ENRG](#) [EINV](#)  
SUBJECT: HOT AND COLD NORWEGIAN ICE TALKS

Classified By: DCM Kevin M. Johnson, reasons 1.4 (b) and (d)

¶1. (SBU) Summary. On October 4, U.S.-Norwegian Informal Commercial Exchange (ICE) talks were held in Oslo, covering a wide variety of trade issues. Key U.S. matters included pharmaceutical patent protection, IPR issues, a Norwegian car tax adversely affecting American cars, the Government Pension Fund (Global)'s exclusion process, oil and energy matters, the potential Norwegian banning of certain anti-flammable chemicals and industrial R&D cooperation. From the Norwegian perspective, the crucial issue was the ongoing salmon dispute, in addition to US legislation concerning offshore oil royalties, governmental contracts with the US Coast Guard and garnering USG interest in the Northern East West (NEW) freight corridor. The USG delegation was led by Commerce Deputy Assistant Secretary for Europe Paul Dyck, with Norwegian Ministry of Trade and Industry State Secretary Rikke Lind chairing Norway's delegation. Major highlights included Lind's pledge to move forward with a joint U.S.-Norwegian experts meeting to investigate the pharmaceuticals issue, and DAS Dyck consulting USG colleagues concerning the ongoing salmon dispute. The GON warned they may take the salmon case to the WTO if progress is not made. All sides welcomed increase attention to alternative and bilateral cooperation on energy projects, the value and need for increasing the number of educational exchanges, and agreement to promote greater US wine market share. End Summary.

Preparatory Meetings: IPR, Pharmaceuticals and Oil/Energy  
-----

¶2. (SBU) Following a briefing by Ambassador Whitney on Embassy involvement in U.S.-Norwegian commercial disputes, and areas of bilateral cooperation such as educational exchanges, DAS Dyck attended several preparatory meetings. The first, chaired by the local counsel for the Motion Picture Association of America (MPAA) and the International Federation of the Phonographic Industry (IFPI), focused on intellectual property rights (IPR) issues. U.S. rightsholders concerns include promoting the mandatory filtering of copyright-infringed materials by Internet Service Providers (ISPs), and obligating that ISPs disclose

the identity of customers committing piracy to rightsholders.

Additionally, the Norwegian Copyright Act, which allows customers to "share" certain copyright protected audio and video media, was reviewed. Specifically, the GON reimburses European rightsholders through a quasi-government agency for such "sharing," but does not target such government funds to affected US rightsholders. A recent Norwegian customs law was praised. The new legislation addressed a loophole where customs officials could not inform rightsholders of seized, suspected counterfeit/pirated goods, and give the holders an opportunity to pursue injunctive relief. Although the new legislation fixed this issue, it only provides rightsholders a short 5 day window to determine whether to move forward with costly legal relief (and, if unsuccessful, the rightsholders inherit the burden of covering all legal costs for the failed injunction). Local counsel also requested a Ministry of Education meeting to convey anti-piracy concerns to Norwegian students, and educate students that piracy is not a "victimless" crime. Finally, urging the GON to dedicate more financial and staffing resources to allow Norwegian law enforcement officials to combat internet piracy was encouraged.

13. (SBU) The local American Chamber of Commerce chapter held a briefing on the pharmaceutical dispute. Attendees included pharma representatives from Wyeth and Eli Lilly, in addition to a local lobbying firm. The long-standing, complex issue threatens significant local revenues. As background, until 1992, Norway limited patent protection for pharmaceuticals to the manufacturing process for a drug's active ingredient. Although Norway introduced product patents for pharmaceuticals in 1992, the previous system has left a difficult legacy for pharma companies as competitors claiming to use non-patented processes have recently entered the market. Finland had a similar system, but recently addressed this problem through legislation, to the general satisfaction of the pharmaceutical companies. The Norwegian

government has refused to change the system, despite extensive diplomatic intervention by the Embassy and the local UK and Swiss Embassies, the USG and a lobbying campaign through the pharma firms. (Note: Despite such efforts, little success has been achieved, as evidenced by Pfizer's recent court loss to a generic competitor concerning the drug Lipitor. This drug previously accounted for 25% of Pfizer's local revenues, resulting in lost jobs and significant lost revenues.) Industry members and advocates pressed for the GON to adopt the legislative model followed by Finland.

14. (C) Subsequently, DAS Dyck met with local representatives of US oil companies, who stressed the need to closely watch the results of the October 1 merger between Norwegian government-controlled energy giants Statoil and Hydro. The new company, StatoilHydro, controls 80 percent of the Norwegian Continental Shelf (NCS)'s operatorship. Access to supplier contracts was also discussed. (Note: Norway's largest supplier to the energy industry, Aker Kvaerner, was recently "bought in" by the GON in a well-publicized asset purchase transaction, raising additional concerns of closing access to businesses not owned by the GON). Stressing the need for certainty and predictability, while also describing the enormous resources within their own companies to pursue a bid, the representatives sought GON assurances that the 20th oil concession round would continue as planned. (Note: the 20th round has been postponed for one year, until 2009. The representatives conceded that as awarded licenses from the last round have not been fully exploited, given the lack of oil rigs and extraction material, the GON had a strong position to demand an extension of the next round.)

15. (SBU) During a pre-talk dinner, the Norwegians advocated USG support of the NEW freight corridor, which conceivably would involve the transshipment of goods through Norway to the United States via countries including Sweden, Finland, Russia, Kazakhstan and China.

Other issues: Car Tax, The Pension Fund (Global)

-----

¶6. (SBU) Embassy staff also briefed DAS Dyck on automotive tax concerns. Since January 1, 2007, all non-EU tested cars are subject to an engine displacement factor when taxes are formulated. EU tested cars have replaced displacement with a carbon dioxide factor. Certain American cars exported to Norway, which are neither tested in Europe, nor use EU test cycles, must use the displacement factor, resulting in higher taxes. In addition, the displacement factor increased by 23% from last year, resulting in even higher taxes on certain US cars. The Embassy has advocated that the GON replace EU carbon dioxide standards with analogous EPA standards, which the GON has refused. The Norwegian government insists that Norway must follow the EU directive concerning automobile standards related to carbon dioxide emissions, although Post has pointed out that establishing a tax formula does not mandate using EU carbon dioxide standards. The American cars affected by the new tax regime are also excluded from complying with EU carbon dioxide emission standards, based on a 2003 amendment to the Norwegian budget. Even if carbon dioxide emissions are to be included as a factor, Post advocated that EPA standards, rather than EU standards, be used. Norway dismissed that argument, considering that EPA figures are not "directly comparable" to EU standards.

¶7. (SBU) DAS Dyck was also briefed on the Norwegian Pension Fund (Global), with current assets estimate near \$330 billion. The Fund's revenues are derived from the country's petroleum industries, and transferred into diversified securities invested abroad. It is the largest pension fund in Europe. The Fund also has an advisory body known as the Council of Ethics, created to ensure that invested companies adhere to certain ethical guidelines. Following the Council's recommendation, the Fund divests shares from reviewed companies. The majority of investments blacklisted involve American companies. Most notably, Wal-Mart was excluded by the Fund in 2006, which garnered international media attention. (Note: The Embassy has been actively engaged in questioning the Council's review procedures, with Ambassador Whitney raising questions of the fairness of the

Wal-Mart divestment, and the sufficiency of the Council's exclusion review process, urging that exclusions are based on clear, even-handed guidelines substantiated by solid and sound data).

#### ICE Talks - Multilateral/Regional Issues

-----

¶8. (SBU) Representatives from the Norwegian MFA welcomed USG commitment to seeing the successful completion of the Doha WTO round. The GON delegation outlined that the NEW freight corridor would build on an existing infrastructure, and is projected to take 7-10 years to complete. Obstacles include getting China involved and customs issues across borders. (Note: The GON has not had extensive discussions with either China or Russia on this concept). The Norwegians stressed that US support was deemed crucial. The Norwegians also raised concerns that Norwegian company Det Norske Veritas (DNV) would be denied US Coast Guard contracts due to recent US legislation.

#### Norwegian-US Bumps in the Road: Specific Issues

-----

¶9. (SBU) DAS Dyck raised the pharmaceutical issue, noting the deleterious effects of the pharmaceutical patent loophole. Pointing to the Finnish solution, he questioned whether the GON could amend existing GON legislation. The GON delegation raised a series of counter-arguments, including that the pre-1992 Norwegian legislation was fair and intended to encourage competition, US pharmacy companies knew of the issues for years and not reacted until recently, and that fixing the loophole would unfairly prejudice generic competitors. Moreover, the delegation questioned how economically important this was to US pharma companies, and

that amending legislation would create an unwelcome precedent, where other companies would be emboldened to challenge existing legislation on a wide array of issues. Seeking common ground, Lind promised that a meeting between USG and GON experts on this issue must occur before Christmas to determine what the issue involves, and how to possibly solve it.

¶10. (SBU) After raising IPR concerns such as filtering and internet piracy, and welcoming recent Norwegian customs legislation, DAS Dyck elicited a pledge from an Education Ministry representative to speak with industry representatives concerning anti-piracy education (but the difficulty of it entering into Norwegian school curricula was noted). Concerning the recent customs legislation, DAS Dyck urged Norwegians to increase the number of days from which rightsholders must act, from five to ten days (an average in Europe), and ensure that rightsholders not be unfairly burdened with court fees if an injunction is unsuccessful. A Trade Ministry attendee noted that it was "too early to tell" whether the new legislation, enacted in September, was leading to increased notifications to rightsholders. The Norwegian delegation also advised that the GON is reviewing the IPR law next year and will issue a White Paper on the subject.

¶11. (SBU) DAS Dyck next raised the recent Norwegian automobile tax regime. The Finance Ministry delegate held that Norway's tax regime already had two standards (for EU tested and non-EU tested cars), and that an additional standard for non-EU tested US cars would not be practicable and "open a floodgate," particularly given that other non-EU cars, such as Japanese or Chinese manufactured, would then likely ask for similar exemptions. DAS Dyck suggested that there be some coordination with the US-EU dialogue on standards.

¶12. (SBU) The Norwegians voiced their strong disappointment on the long-standing salmon dispute. The issue focuses on the U.S.-imposed tariff on fresh and chilled Norwegian salmon, which has been in place since 1991. A recent sunset review resulted in a tariff continuance, given that lifting the duty was deemed to result in continued dumping. The tariff has effectively excluded most Norwegian salmon from the U.S. markets. (Note: the tariff does not affect imports

of Norwegian prepared and smoked salmon). Led by Ministry of Fisheries and Coastal Affairs Secretary General Joern Krog, the Norwegians pressed for a bilateral resolution, but warned that they may be resigned to force the matter before the WTO should all else fail.

¶13. (C) Talks then moved to the Norwegian Pension Fund (Global). A Ministry of Finance representative emphasized that the GON is not discriminating against U.S. companies, and that the vast majority of the Fund's investments (approximately 3500 businesses) included U.S. companies. Further, the GON noted that once a U.S. company was excluded from the Fund, another U.S. investment was acquired. (Note: The Ambassador has consistently raised that this replenishment does not assist the lost goodwill of a U.S. company which has been divested). The Finance representative noted that in 2006, only 80 businesses were investigated, but could not provide information as to the number of U.S. companies targeted by such investigations. After DAS Dyck noted that the majority of divested companies were American, State Secretary Lind remarked that this was a "coincidence." (Note: A Wal-Mart executive informed Econ Officer that given the vast number of Chinese and Indian suppliers used engaged by international (and U.S.) department store rivals who have not incurred the Council's investigatory wrath, he believes that U.S. companies, generally, and Wal-Mart particularly, are targeted by the Fund's exclusionary processes).

¶14. (SBU) The Norwegians turned to pending legislation in Congress, whereby holders of offshore leases held in the US Gulf of Mexico from 1998-1999 would pay billions of dollars in additional royalties, or risk being barred from further

deepwater Gulf leasing. The Norwegians urged that the legislation not be adopted (which would largely affect GON-controlled StatoilHydro), claiming the pending law is punitive and violates contractual equitable principles. The GON delegation presented DAS Dyck with a non-paper on the matter.

¶15. (C) Turning to oil and energy cooperation, DAS Dyck raised U.S. oil company anti-competition concerns (Note: Following the talks, DAS Dyck met with StatoilHydro representatives who believe that the GON will be reluctant to award the energy giant additional operatorships in next 20th licensing round, given their predominance on the NCS). Briefly discussing the status of Norwegian-Russian progress on the so-called "disputed zone" (located in the Barents), the GON delegation members were optimistic, but pointed out that talks have been continuing for over 30 years. Developing this area, should an agreement be had, would be according to Lind an "area of opportunity" for both the U.S. and Norway. (Note: Local U.S. oil companies have noted that it is possible that some resolution is forthcoming, given that Russian navy representatives are "not always saying no" during talks with Norwegian officials.)

¶16. (SBU) Concerning carbon capture and storage (CCS), all sides noted that was a crucial area in terms of combating global climate change. GON delegates discussed the Norwegian Mongstad CCS project, which focuses on carbon sequestration from gas, while DAS Dyck brought up the US-led FutureGen project, involving sequestration from coal. U.S. delegates noted that Norwegian participation in FutureGen would be a prime opportunity to tackle carbon emissions problems, particularly challenging to the coal-reliant developing world. (Note: Ambassador Whitney recently urged then-Petroleum Minister Enoksen to support the FutureGen project, which remains under GON review). All sides praised the upcoming first shipment of liquefied natural gas to the U.S. from the Norwegian Snøhvit project as a milestone, which opened an exciting chapter in the U.S.-Norwegian energy relationship. Over one-half of the Snøhvit project's LNG will be destined for Cove Point, Maryland.

¶17. (SBU) The value of educational exchange was stressed by the parties, particularly within the industrial research and development sectors. The GON Education Minister will soon visit the US to promote educational exchange, and a 2008 White Paper on Internationalization will include ways to address certain educational funding shortfalls, which poses serious challenges to Norwegian students seeking to study in the U.S.

¶18. (SBU) DAS Dyck raised Norway's proposed legislation banning numerous chemical substances, including DecaBDE. This legislation goes over and beyond the EU legislation in the Restriction of Hazardous Substances (RoHS), both in the number and type of chemicals banned, as well as the fact that the EU specifically exempted DecaBDE from the RoHS. A Trade Ministry delegate noted that chemical substances were being absorbed into the water, and filtered into the food chain, and thus was a real and pressing concern. He vowed that Norway would take action, even if not all scientific studies had been finalized. State Secretary Lind jumped in, noting that such a ban would only occur after scientific studies proved that the chemicals were indeed harmful. She also seemed alarmed at hearing other countries (as well as Norwegian industry) had spoken up against the proposals. DAS Dyck raised concerns of imposing a ban, particularly even before scientific studies evaluating the harm of DecaBDE had been completed.

¶19. (SBU) The Norwegians noted a Norwegian company, NEMKO, is unable to test electrical equipment in the United States because of OSHA legislation. DAS Dyck noted that Commerce would follow-up with the Department of Labor.

¶20. (SBU) In a positive step, the GON agreed that encouraging an increase Norwegian market share for US wine producers, who currently have a minor 1.9 percent market share, was needed.



So Long, and Thanks For All the Fish?

-----

¶21. (C) Comment. The pharmaceutical dispute composed the bulk of the ICE talks. The State Secretary's pledge to jump-start a dialogue between the USG and GON shows promise towards resolving the issue, but the seeming intransigence demonstrated from her colleagues in the Health, Finance and Trade Ministries does not lead to optimism. Resolving the salmon issue remained the crucial Norwegian item, and threats to push the matter by the Norwegians into the WTO seemed real. However, this matter lies in the hands of U.S. domestic industry, which has not been amenable to dropping the duties. Norwegian arguments and/or statements defending their positions on certain topics (including Lind's seemingly innocuous assertion that the majority of the Pension Fund's divested companies were American was a mere "coincidence"), and a Trade Ministry official's plan to ban Deca even without the conclusion of scientific testing, were surprising and may demonstrate the extent to which political considerations are trumping economics or science. Positives included a consensus on supporting CCS research, encouraging educational exchanges, completing the Doha round, and supporting greater U.S. wine exports into Norway. The talks were amiable, and led to a lively debate on a host of issues. Post hopes that State Secretary Lind's often pragmatic approach to USG concerns (even conflicting with representatives of her own delegation) will translate into real, positive action.

¶21. (U) DAS Dyck cleared on this cable.  
WHITNEY